



Alan Lloyd, Ph.D.
Agency Secretary

California Regional Water Quality Control Board

Central Valley Region

Robert Schneider, Chair



Arnold
Schwarzenegger
Governor

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19 December 2005

Mr. Adam Denlinger
City of Modesto
Acting Division Manager
1221 Sutter Avenue
Modesto, CA 95351

CERTIFIED MAIL
7004 1160 0000 0143 5712

CITY OF MODESTO, WATER QUALITY CONTROL FACILITY (WQCF), MODESTO, STANISLAUS COUNTY - ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-0529

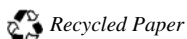
Enclosed is an Administrative Civil Liability Complaint issued by the Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Water Board) pursuant to Section 13385 of the California Water Code for violations of Waste Discharge Requirements (WDRs) Order No. 5-01-120 (NPDES No. CA0079103) by the City of Modesto (Discharger). The Complaint proposes an administrative civil liability of **\$152,000** for the 12-13 October 2004 overflow of raw sewage to Dry Creek.

Pursuant to California Water Code Section 13323, the Discharger may either choose to pay the civil liability and waive a hearing before the Regional Water Board on the matter or choose to contest the Complaint and proceed to a hearing. If the Discharger chooses to waive the right to a hearing, a duly authorized person must sign the waiver and submit it to this office, along with a check payable to the "State Water Resources Control Board Cleanup and Abatement Account" in the full amount of the civil liability. Any waiver will not be effective until 30 days from the date of this Complaint to allow other interested persons to comment on this action. If the Regional Water Board does not receive a waiver and a check for the full amount of \$152,000 by **18 January 2006**, a hearing will be scheduled at the

16 and 17 March 2006 Regional Water Board Meeting in Sacramento. Additionally, the Executive Officer may decide to schedule the Complaint for a hearing consistent with California Water Code Section 13323(b). If the Discharger intends to proceed to hearing on this matter, it must submit written comments and evidence to the Regional Water Board, attention: Jon Ericson, by **18 January 2006**.

Persons wishing to submit comments on this action should submit written comments within 30 days from the date of this letter to the Regional Water Board, attention: Jon Ericson.

California Environmental Protection Agency



If you have any questions or comments, please contact Jon Ericson at (916) 464-4660 or Greg Vaughn at (916) 464-4742.

THOMAS R. PINKOS
Executive Officer

Enclosure

cc:

Mr. Douglas Eberhardt, U.S. Environmental Protection Agency, Region IX, WTR-5, San Francisco
U.S. Army Corps of Engineers, Sacramento
U.S. Fish & Wildlife Service, Sacramento
National Marine Fisheries Service, Sacramento
Ms. Frances McChesney, State Water Resources Control Board, OCC, Sacramento
Mr. Mark Bradley, State Water Resources Control Board, OSI, Sacramento
Mr. Bill Hereth, State Water Resources Control Board, CWP, Sacramento
Mr. Philip Isorena, Division of Water Quality, State Water Resources Control Board, Sacramento
Department of Health Services, Office of Drinking Water, Sacramento
Department of Health Services, Office of Drinking Water, Stockton
Department of Health Services, Environmental Management Branch, Sacramento
Department of Fish and Game, Region IV, Fresno
Mr. James Starr, Department of Fish and Game, Stockton
Department of Water Resources, Central District, Sacramento
Department of Water Resources, Fresno
Stanislaus County Planning Department, Modesto
Stanislaus County Environmental Health Department, Modesto
Stanislaus County Department of Environmental Resources, Modesto
California Urban Water Agencies, Sacramento
Central Delta Water Agency, Stockton
Contra Costa Water District, Concord
Delta Protection Commission, Walnut Grove
South Delta Water Agency, Stockton
Delta Keeper, Stockton
Ms. Allison Boucher, Friends of the Tuolumne, Ceres
Mr. Mike Mooney, Modesto Bee, Modesto

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0529

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

CITY OF MODESTO
WATER QUALITY CONTROL FACILITY
STANISLAUS COUNTY

This complaint is issued to the City of Modesto (hereafter referred to as Discharger) based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. 5-01-120 (NPDES No. CA0079103) and/or violation of California Water Code (CWC) Sections 13264 and 13376 pursuant to CWC Section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC Section 13323, which authorizes the Executive Officer to issue this complaint.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns and operates the City of Modesto Water Quality Control Facility (WQCF) and accompanying collection, treatment and disposal systems, which provides sewerage service to the City of Modesto, Empire Sanitary District, and a portion of the City of Ceres. The primary disposal option for treated municipal wastewater is via land reclamation, through irrigation of fodder, fiber, or seed crops and pasture irrigation for non-milking animals. Excess wastewater volume is stored in on-site impoundments for seasonal discharge (October through May) to the San Joaquin River, a water of the United States.
2. On 11 May 2001, the Regional Water Board adopted WDRs Order No. 5-01-120 (NPDES No. CA0079103) to regulate discharges of wastewater from the WQCF. The Discharger owns and maintains approximately 470 miles of pipeline for the collection of raw sewage and conveyance to the treatment facilities.

Raw Sewage Spill

3. The Discharger reported that from 12-13 October 2004 1,198,314 gallons of raw sewage overflowed from the Discharger's sanitary sewer collection system to a surface water body, Dry Creek, in Stanislaus County. Dry Creek is a water of the United States which flows into the Tuolumne River, also a water of the United States, near Highway 99 in Modesto. The raw sewage overflow and discharge to Dry Creek resulted after a pressure manhole plate was dislodged from a pressurized sewer line. The pressure plate failure was initially reported as suspected vandalism. The sewage combined with ambient flows in Dry Creek and was not amenable to clean-up. The overflow also resulted in the erosion of the creek bank and discharge of sediment into the Creek.

4. The sewage overflow occurred in a remote location near Thousand Oaks Trail in back of the Creek Side Golf Course in Modesto. The overflow was discovered by a jogger who notified City Parks staff, who in turn notified City Public Works staff on the morning of 13 October 2004. According to the Discharger, the sewage overflow likely started at 8:05 pm on 12 October 2004, and continued until 9:35 am on 13 October 2004 when the Discharger was able to shut off the flow through the compromised sewer line. The pumping station which pressurizes the sewer line where the pressure plate was located (Scenic Drive pumping station) was equipped with numerous alarms including low wet well and pump failure alarms. According to the Discharger, these alarms were ineffective in providing early notification of the overflow condition as the sewage was likely gravity feeding out of the dislodged pressure plate at the same rate as the incoming volume of sewage to the pumping station wet well.
5. Once the overflow was identified, the Discharger did provide timely initial notification to the California Office of Emergency Services and other state and local agencies including the Regional Water Board. The City also issued a press release soon after the overflow was discovered. Regional Water Board staff responding to the scene on 13 October 2004 noted significant Discharger resources responding to the incident. The Discharger removed standing sewage along the Creek bank with vacuum trucks, and applied a disinfectant to soil impacted by the spill. The Discharger initiated a sampling program to assess impacts of the overflow on surface waters, and requested Regional Water Board staff input on this effort and follow-on sampling requirements. The Discharger conducted a public notification process for residents living in local neighborhoods, and posted bi-lingual warning signs along the Creek from Claus Road west to the Tuolumne River and beyond Highway 99.
6. During the pressure plate repair process, the Discharger found all but one of the twelve bolts used to hold the force pressure plate in place were broken off. The remaining bolt was partially backed out of the plate. The Discharger considered this situation unusual and suspicious, and contacted the City of Modesto Police Department to conduct an investigation. This subsequent investigation included a metallurgical evaluation of several of the stainless steel pressure plate retaining bolts that were recovered from the scene. This evaluation concluded that the tested bolts failed as a result of corrosion fatigue. This report suggests the overflow was not due to an act of vandalism, an act by a third party which could not have been prevented or avoided by the exercise of due care or foresight. Rather, while the spill was unintentional, this report indicates the cause was a structural failure within the collection system. The Discharger received this report on 18 January 2005. The findings of the police investigation and metallurgical evaluation regarding the retaining bolts were distributed throughout various City of Modesto departments. However, these findings were not communicated to Regional Water Board staff until 1 July 2005, after a news reporter contacted Regional Water Board staff and informed them of the existence of this report.

7. WDR Order No. 5-01-120 Prohibition No. A.3. states: *“The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Standard Provision A.13. (See attached “Standard Provisions and Reporting Requirements for Waste Discharge Requirements (NPDES)”* The raw sewage overflow to Dry Creek was the result of a collection system failure and not an unavoidable bypass as described by Standard Provision A.13.
8. WDR Order No. 5-01-120 Provision E.2. states: *“Neither the discharge nor its treatment or disposal shall create a nuisance or pollution as defined in Section 13050 of the California Water Code.”* The discharge of raw sewage to Dry Creek caused a condition of pollution in Dry Creek altering the quality of the waters of the State to a degree that beneficial uses were affected including impacts on aquatic life and exclusion of the creek for contact recreation.
9. Standard Provisions, General Provision A.6. states: *“The Discharger shall at all times properly operate and maintain all facilities, and systems of treatment and control including sludge use and disposal facilities (and related appurtenances) that are installed or used to achieve compliance with this Order.”* The overflow of raw sewage to Dry Creek resulted from a dislodged pressure plate. Results of a metallurgical evaluation of several of the stainless steel pressure plate retaining bolts that were recovered from the scene concluded that the tested bolts failed as a result of corrosion fatigue.
10. CWC Section 13193, Sanitary sewer system overflow reports, states in part:

“(b)(1) The cause of the overflow. The cause shall be specifically identified, unless there is an ongoing investigation, in which case it shall be identified immediately after completion of the investigation...” The Discharger received the bolt testing report on 18 January 2005. The findings of the police investigation and metallurgical evaluation regarding the retaining bolts were not communicated to Regional Water Board staff until 1 July 2005, after a third party notified Regional Water Board staff of this report.
11. CWC Section 13385 states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements...issued pursuant to this chapter...

(5) Any requirements of Section 301, 302, 306, 307,308, 318, 401, or 405 of the Clean Water Act, as amended.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

12. The maximum administrative civil liability which can be imposed by the Regional Water Board under CWC Section 13385 is \$11,983,140 [\$10,000 for each day of violation (\$10,000 times 1 day) plus \$11,973,140 (\$10 times (1,198,314 gallons – 1000 gallons)].
13. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et. seq.*), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).

THE CITY OF MODESTO IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes to assess Administrative Civil Liability in the amount of **one hundred fifty two thousand dollars (\$152,000)**. The amount of the liability proposed is based upon a review of the factors cited in CWC Section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **16-17 March 2006**, unless the Discharger agrees to:
 - a. Waive the hearing and pay the proposed civil liability in full; or
 - b. Waive the right to a hearing in 90 days, and submit a settlement proposal within 30 days of the date of this Complaint that could include an agreement to conduct a Supplemental Environmental Project (SEP) and also includes payment of

monetary liability. The Discharger may preserve its right to a hearing pending approval of the settlement proposal.

3. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Discharger may waive the right to a hearing. If you wish to waive the hearing, **within 30 days of the date of this complaint**, sign and return the waiver to the Regional Water Board's office with a check in the amount of the civil liability made payable to the "State Water Resources Control Board Cleanup and Abatement Account." Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

THOMAS R. PINKOS, Executive Officer

Date

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the City of Modesto (hereinafter known as “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0529 (hereinafter the “Complaint”);
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$152,000** by check, which contains a reference to “ACL Complaint No. R5-2005-0529” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint that will not become final until after a public comment period.
6. I understand that the Executive Officer has complete discretion to modify or terminate this settlement.
7. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT R5-2009-0575

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
CITY OF ISLETON
WASTEWATER TREATMENT FACILITY
SACRAMENTO COUNTY

This Complaint is issued to the City of Isleton (hereafter Discharger) pursuant to California Water Code (CWC) sections 13350, 13268 and 13385, which authorize the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 90-186, and subsequent Orders issued to compel compliance with the WDRs.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

Background

1. The Discharger owns and operates the wastewater collection, treatment, and disposal system that serves the City of Isleton. The Discharger receives up to 117,000 gallons per day of domestic and commercial wastewater from the community. The Discharger also has a contractual agreement to accept 60,000 gallons of wastewater per day from the Oxbow Marina Recreational Facility.
2. On 22 June 1990, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order 90-186. The WDRs prescribe requirements for the discharge of domestic wastewater from the treatment system owned and operated by the Discharger. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements. A revised Monitoring and Reporting Program (MRP) was issued by the Executive Officer on 10 October 2002 to update the outdated version included with the WDRs. The revised MRP includes requirements for continuous influent flow monitoring using a calibrated metering device.
3. The collection system consists of approximately 16,550 lineal feet of gravity sewer lines. The majority of the collection system was installed around 1923 and therefore is at least 85 years old. A 1997 *Wastewater Collection System Cleaning and Inspection Report* indicated that the collection system had serious inflow and infiltration (I/I) problems. The collection system conveys wastewater from the City of Isleton to a lift station, which pumps the wastewater approximately 4,335 feet through a 10-inch, high density polyethylene (HDPE) force main to an aeration pond. The lift station and force main were installed in 1975. The force main is buried, except for a small section approximately 20 feet long that crosses a reclamation ditch.

4. From the aeration pond, wastewater gravity flows into two stabilization ponds totaling approximately seven acres in size. These ponds are operated in series. Effluent from the stabilization ponds is then discharged via gravity to six evaporation/percolation ponds totaling 24.2 acres in size.

Chronology of Previous Enforcement

5. On 3 May 1996, the Board issued CDO 96-095 to address wastewater overflows, which occurred due to the lack of capacity in the wastewater ponds. The CDO required the Discharger to prepare technical reports and implement improvements and modifications to the collection system, wastewater treatment plant, lift station and force main to ensure compliance with the WDRs. Full compliance with the CDO was to be achieved by 1 January 1998; however, the Discharger did not comply.
6. On 7 January 2002, the Discharger observed that the wastewater level in the aeration pond had dropped significantly. Upon investigation, the City found that the force main crossing for the reclamation ditch, located at the southern end of the percolation ponds, was broken, and that raw sewage was being discharged into the ditch. Based on the Discharger's observation that the aeration pond water level was down by two inches, the amount of wastewater lost from the aeration lagoon system was approximately 90,000 gallons. Although the Discharger recovered approximately 30,000 gallons, the remaining wastewater was discharged to Georgiana Slough via the reclamation pump station.
7. Because the Discharger was unable to meet the compliance date for completing the improvements as required by the CDO, the Acting Executive Officer issued a Time Schedule Order (TSO) pursuant to CWC section 13308 on 9 August 2002. The TSO required the Discharger to submit:
 - A Groundwater Characterization Workplan,
 - A Sewer Lift Station Safeguard Disposal Plan,
 - A Sludge Disposal Plan,
 - A Collection System Engineering Evaluation and Corrective Action Plan,
 - A Groundwater Well Installation Report,
 - A Construction Inspection Report,
 - A Revenue Plan, and
 - Quarterly Progress Reports.

In addition, the TSO required the Discharger to comply with revised MRP 90-186. The TSO has not yet been rescinded.

8. On 19 October 2007, following a facility inspection and meeting with the Discharger, the Executive Officer issued an Order pursuant to CWC section 13267 to address certain

problems identified during the inspection and to require submittal of certain technical reports. In summary, the Order required the Discharger to submit:

- A detailed plan and schedule to repair the percolation pond berms,
- A report certifying that all equipment necessary to conduct freeboard monitoring in compliance with the revised MRP had been installed,
- A report certifying that the Oxbow Marina influent flow meter had been repaired and/or replaced and was calibrated, and
- A Capacity Analysis Conceptual Plan for the WWTF to address expected growth over the next four years.

As of the date of this ACL Complaint, the Discharger has completed all of the tasks required by the Section 13267 Order, except for submitting the Capacity Analysis Conceptual Plan, which was due by 28 February 2008. Based on conversations with the Discharger's consultant, Board staff understands that the Capacity Analysis Conceptual Plan has not been submitted because of influent flow meter problems.

Chronology of Recent Violations

9. On 23 October 2008, the Discharger notified Board staff that it had discovered a raw sewage spill from the force main. The spill occurred in a cornfield. An unknown volume of the spill flowed to a drainage ditch and then to Georgiana Slough via a pumping station. The spill resulted from a crack measuring approximately 18-inches long in a buried section of the force main. The Discharger estimated that the volume of the spill may have been as much as 2,000,000 gallons because the leak in the force main may have begun as early as 15 September 2008 (39 days prior to its discovery), based on a reduction of influent flows. Following discovery of the spill, the drainage ditch was blocked with soil to prevent further migration of the raw sewage. The leaking section of pipe was repaired on 24 October 2008. On 3 March 2009, Board staff issued a Notice of Violation (NOV) for the spill. The NOV required the Discharger to submit a technical report by 1 May 2009 describing corrective actions to be taken to prevent future spills. In addition, the NOV required the Discharger to provide documentation showing that the City of Isleton's influent flow meter had been repaired or replaced.
10. On 13 April 2009, the Discharger notified Board staff that it had discovered another raw sewage spill from the force main. The spill resulted from a leak in a cracked section of the buried force main approximately 20 to 30 feet southeast of the drainage ditch near the wastewater ponds. The Discharger stated that an unknown volume of raw sewage entered the drainage ditch and then flowed to Georgiana Slough. The estimated volume of the spill was not determined because the Discharger's influent flow meter was not operational. The Discharger stated that within approximately 90 minutes following discovery of the spill, the pumping plant was shut down and any sewage remaining of the ground was removed via a vacuum truck and transported to the wastewater ponds. Repairs to the cracked section of pipeline were completed on 14 April 2009. Prior to discovery of the spill, the Discharger had been walking this

portion of force main several times per month inspecting for potential leaks. On 19 June 2009, Board staff issued an NOV for the spill which required the Discharger to provide a workplan by 1 August 2009 that described proposed measures (e.g., video surveying, etc.) that would be taken to provide an assessment of the integrity of the influent pipeline. In addition, the NOV required the Discharger to provide documentation showing that the City of Isleton's influent flow meter had been repaired or replaced by 1 August 2009. As of early October 2009, the Discharger has purchased a new flow meter but has not permanently installed it.

Violations under CWC section 13350

11. Administrative civil liability may be imposed for violations of WDRs Order 90-186 pursuant to CWC section 13350(a) which states, in relevant part,
 - (a) Any person who ... in violation of any waste discharge requirement ... or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).
12. CWC section 13350(e) states, in relevant part,
 - (e) The state board or a regional board may impose civil liability administratively ... either on a daily basis or on a per gallon basis, but not both.
 - (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.
 - (2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.
13. Provision No. C.1 of WDRs Order 90-186 states:

The Discharger shall comply with the attached Monitoring and Reporting Program.
14. The Discharger's revised Monitoring and Reporting Program (MRP) required that Discharger conduct continuous influent flow monitoring for the volume of sewage discharged to the wastewater ponds.
15. Since at least 1 November 2008 through 1 October 2009 (a period of 334 days), the City of Isleton's influent flow meter has not been functioning, which is a violation of the revised MRP, and hence of Provision C.1 of the WDRs. If the meter had been functioning, the spill that was discovered on 13 April 2009 might have been discovered sooner, and the spill volume may have been reduced. Because the flow meter was not operating, the volume of raw sewage that discharged from the force main was not determined. In addition, because the flow meter is not operating, the Discharger has not submitted the Capacity Analysis Conceptual Plan that was due in February 2008.

16. **Maximum Civil Liability for Violations under CWC section 13350:** Pursuant to CWC section 13350, up to \$5,000 may be assessed per day per violation. Therefore, the maximum penalty for these 334 days of violations under section 13350 is **one million six hundred and seventy thousand dollars (\$1,670,000)**.

Violations under CWC section 13268

17. CWC section 13267(b)(1) states, in relevant part:
... the regional board may require that any person who ... discharges ... or who proposes to discharge waste within its region ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires
18. CWC section 13268(a)(1) states, in part:
Any person failing or refusing to furnish technical...reports as required by subdivision (b) of Section 13267, ...is guilty of misdemeanor and may be liable civilly in accordance with subdivision (b).
19. CWC section 13268(b)(1) states, in part:
Civil liability may be administratively imposed by a regional board... for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
20. Although required by the 19 October 2007 CWC section 13267 Order (see Finding 8), the Discharger has failed to submit the Capacity Analysis Conceptual Plan which was due by 28 February 2008.
21. **Maximum Civil Liability for Violations under CWC section 13268:** As of 1 October 2009, the Discharger is subject to penalties of \$1,000 per day for 580 days of not submitting the Capacity Analysis Conceptual Plan pursuant to CWC section 13267. Therefore, a maximum liability of **five hundred and eighty thousand dollars (\$580,000)** may be assessed pursuant to CWC section 13268.

Violations under CWC section 13385

22. CWC section 13385 states, in relevant part:
(a) Any person who violates any of the following shall be liable civilly in accordance with this section:
...
(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.
...

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

23. Discharge Prohibition A.1 of WDRs Order 90-186 states:

The direct discharge of wastes to surface waters or surface water drainage courses is prohibited.

24. Discharge Prohibition A.2 of WDRs Order 90-186 states:

The by-pass or overflow of untreated or partially treated waste is prohibited.

25. WDRs Order 90-186 does not authorize the discharge of waste to surface waters. Any unpermitted discharge of waste to surface waters is a violation of the Clean Water Act, section 301. CWC section 13385 authorizes the imposition of administrative civil liability for such violations.

26. Per CWC section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. The Discharger spilled an estimated 2,000,000 gallons of raw sewage to surface waters over a period of 39 days in September and October 2008, and an unknown amount of raw sewage on 13 April 2009 (see Findings 9 and 10). For the 2,000,000 gallons spill, a total of at least 1,999,000 gallons were discharged in excess of 1,000 gallons per spill event. Therefore, at \$10 per gallon for discharges in excess of 1,000 gallon, and at \$10,000 per day for each day of discharge, the maximum liabilities are \$19,990,000 for the gallons spilled and \$400,000 for the 40 days of discharge. Taking these maximum liability amounts together, the total amount of penalties that may be assessed pursuant to section 13385 is **twenty million three hundred and ninety thousand dollars (\$20,390,000).**

Total Maximum Penalty

27. Added together, the total maximum penalties that could be assessed under CWC sections 13350, 13268, and 13385 (described in Findings 16, 21, and 26) is **twenty two million six hundred and forty thousand dollars (\$22,640,000)**.

THE CITY OF ISLETON IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **four hundred and fifteen thousand dollars (\$415,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **27/28/29 January 2010**, unless any of the following occurs by **14 December 2009**:
 - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **four hundred and fifteen thousand dollars (\$415,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Central Valley Water Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Central Valley Water Board along with a letter describing the issues to be discussed.

Under Option #2, the Board's Prosecution Team will consider proposing a settlement agreement that would suspend a substantial portion of the penalties, should the Discharger agree to complete the tasks contained in Attachment A according to the proposed deadlines. These tasks are obligations that have been imposed by prior Orders issued by the Central Valley Water Board and are ongoing violations for which administrative civil liability is still accruing. This Complaint does not cut off liability for these violations, or in any way modify the original due dates; Attachment A is intended solely to facilitate settlement discussions.

The Board's Prosecution Team does not believe that all of the assessed penalties should be suspended. The violations that have occurred at the Discharger's facility warrant the payment of at least a portion of the charged administrative civil liability to the *State Water Pollution Cleanup and Abatement Account*.

3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by

PAMELA C. CREEDON, Executive Officer

12 November 2009

Date

wsw/gjc: 9 Nov-09

Attachment A: Proposed Suspended Liability Tasks

**ATTACHMENT A TO
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0575**

Task 1: Influent Flow Meter

Requested due date: **15 January 2010**

Brief Description of the Task: The City of Isleton will install a working flow meter to measure influent wastewater flows from the City of Isleton. The meter shall be calibrated to industry standards.

Project Schedule and Deliverable: By **15 January 2010**, the City of Isleton shall submit a report documenting that the City of Isleton's influent flow meter has been installed, has been properly calibrated, and is measuring influent flows.

Task 2: Capacity Analysis Report

Requested Due date: **30 September 2010**

Brief Description of the Task: As required by a 19 October 2007 Water Code Section 13267 Order, the City of Isleton shall conduct a capacity analysis to show whether the Wastewater Treatment Facility has adequate treatment, storage, and disposal capacity for both current and projected 2015 influent flows.

Project Schedule and Deliverable: By **1 September 2010**, the City of Isleton will submit a Capacity Analysis Report prepared by a California-registered Professional Engineer and bearing the professional's signature and stamp. The capacity analysis shall clearly show whether the wastewater treatment facility has adequate treatment, storage, and disposal capacity for both current influent flows and for projected 2015 influent flows. If there is not enough capacity for projected 2015 flows, then the Capacity Analysis Report will contain a conceptual plan for treatment plant expansion to accommodate expected growth. Separate hydraulic capacity analyses (water balances) shall be prepared for the average rainfall year and the 100-year return period total annual precipitation. The water balances shall comply with the guidance document attached to the 19 October 2007 Water Code Section 13267 Order, and shall be based on the following:

- a. Influent flow monitoring data collected over the last five years;
- b. Reasonable projections of infiltration and inflow (I/I) based on actual flow monitoring data before and after the recently completed I/I correction program;
- c. A minimum of two feet of freeboard in each pond and effluent disposal area at all times;
- d. Historical local evaporation and evapotranspiration data (monthly average values);
- e. Local precipitation data with the 100-year return period annual total distributed monthly in accordance with mean monthly precipitation patterns;
- f. Effluent disposal area loading rates distributed monthly in accordance with expected seasonal variations; and
- g. Projected long-term percolation rates in the unlined ponds and effects of solids plugging.

Task 3: Sewer Force Main Completion Report

Requested Final due date: **30 September 2010**

CITY OF ISLETON
WASTEWATER TREATMENT FACILITY
SACRAMENTO COUNTY

Brief Description of the Task: The City of Isleton will design and install a sewer force-main to replace the existing 10-inch force main. The force main will measure approximately 4,400 feet long and extend from the wet well (headworks) to the evaporation ponds.

Project Schedule and Deliverable: Beginning **immediately** and continuing until the force main is replaced, the Discharger shall continue to walk the sewer force main five days per week inspecting for potential leaks. Inspection results must be documented in the monthly monitoring reports that are required by the WDRs.

By **1 December 2009**, the City of Isleton will submit a report showing that it has released bid documents for the project.

By **1 September 2010**, the City of Isleton will submit a report showing that the force main has been installed to industry standards and is being used to transport wastewater to the wastewater plant.

Task 4: Quarterly Progress Reports

Beginning 1 February 2010, and by the first day of the second month following each calendar quarter (**i.e., by 1 February, 1 May, 1 August, and 1 November each year**), the City of Isleton shall submit quarterly progress reports describing the work completed to date regarding each of the tasks described above.



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

27 January 2010

Bruce Pope
City of Isleton
101 Second Street
P.O. Box 716
Isleton, CA 95641

CERTIFIED MAIL
7008 1140 0002 8805 6107

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2010-0504, CITY OF ISLETON, SACRAMENTO COUNTY

Enclosed is Administrative Civil Liability Order R5-2010-0504 which assesses **three hundred and ninety thousand dollars (\$390,000)** in civil liabilities for violations of Waste Discharge Requirements (WDRs) Order No. 90-186. The violations are for raw sewage spills to surface waters of Georgiana Slough, failure to have an operational influent flow meter, and failure to submit a required technical report. Of the \$390,000 assessed, the Order allows the City of Isleton to complete certain compliance projects to satisfy \$375,000 of the liability. The enclosed payment schedule letter allows the City to pay the remaining \$15,000 in eight monthly payments, beginning on 26 February 2010 and ending on 30 September 2010.

In order to conserve paper and reduce mailing costs, paper copies of the Order and Payment Schedule have been sent to the Discharger only. The full text versions of the documents are available on the Central Valley Water Board's website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/index.shtml

Anyone may request a paper copy of this document by calling the Central Valley Water Board staff listed below.

If you have any questions or comments regarding the Order please contact me at (916) 464-4835.

Original signed by

WENDY S. WYELS
Supervisor, Compliance and Enforcement Section

Enclosure: ACL Order R5-2010-0504
Payment Schedule Letter

cc: see next page

cc w/ enc: David Larsen, Law Offices of David L. Larsen, San Ramon

cc w/o enc: Kenneth Landau, Central Valley Water Board, Rancho Cordova
Reed Sato, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento
Dana Booth, Sacramento Co. Env. Management Dept., Sacramento
Bill Jennings, California Sportfishing Protection Alliance, Stockton
Dan Hinrichs, DJH Engineering, Placerville

gjc: 27 Jan-10

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2010-0504

IN THE MATTER OF
CITY OF ISLETON
WASTEWATER TREATMENT FACILITY
SACRAMENTO COUNTY

This Administrative Civil Liability Order is issued to the City of Isleton (hereafter Discharger) pursuant to California Water Code (CWC) sections 13350 and 13385, which authorize the imposition of administrative civil liability, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Order is based on a settlement of claims presented in an Administrative Civil Liability Complaint, issued by the Executive Officer on 12 November 2009 (ACL Complaint), alleging that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 90-186.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

Background

1. The Discharger owns and operates the wastewater collection, treatment, and disposal system that serves the City of Isleton. The Discharger receives up to 117,000 gallons per day of domestic and commercial wastewater from the community. The Discharger also has a contractual agreement to accept 60,000 gallons of wastewater per day from the Oxbow Marina Recreational Facility.
2. On 22 June 1990, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order 90-186. The WDRs prescribe requirements for the discharge of domestic wastewater from the treatment system owned and operated by the Discharger. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements. A revised Monitoring and Reporting Program (MRP) was issued by the Executive Officer on 10 October 2002 to update the outdated version included with the WDRs. The revised MRP includes requirements for continuous influent flow monitoring using a calibrated metering device.
3. The collection system consists of approximately 16,550 lineal feet of gravity sewer lines. The majority of the collection system was installed around 1923 and therefore is at least 85 years old. A 1997 *Wastewater Collection System Cleaning and Inspection Report* indicated that the collection system had serious inflow and infiltration (I/I) problems. The collection system conveys wastewater from the City of Isleton to a lift station, which pumps the wastewater approximately 4,335 feet through a 10-inch, high density polyethylene (HDPE) force main to an aeration pond. The lift station and force main were installed in 1975. The force main is buried, except for a small section approximately 20 feet long that crosses a reclamation ditch.

4. From the aeration pond, wastewater gravity flows into two stabilization ponds totaling approximately seven acres in size. These ponds are operated in series. Effluent from the stabilization ponds is then discharged via gravity to six evaporation/percolation ponds totaling 24.2 acres in size.

Chronology of Previous Enforcement

5. On 3 May 1996, the Board issued CDO 96-095 to address wastewater overflows, which occurred due to the lack of capacity in the wastewater ponds. The CDO required the Discharger to prepare technical reports and implement improvements and modifications to the collection system, wastewater treatment plant, lift station and force main to ensure compliance with the WDRs. Full compliance with the CDO was to be achieved by 1 January 1998; however, the Discharger did not comply.
6. On 7 January 2002, the Discharger observed that the wastewater level in the aeration pond had dropped significantly. Upon investigation, the City found that the force main crossing for the reclamation ditch, located at the southern end of the percolation ponds, was broken, and that raw sewage was being discharged into the ditch. Based on the Discharger's observation that the aeration pond water level was down by two inches, the amount of wastewater lost from the aeration lagoon system was approximately 90,000 gallons. Although the Discharger recovered approximately 30,000 gallons, the remaining wastewater was discharged to Georgiana Slough via the reclamation pump station.
7. Because the Discharger was unable to meet the compliance date for completing the improvements as required by the CDO, the Acting Executive Officer issued a CWC section 13308 Time Schedule Order (TSO) on 9 August 2002. The TSO required the Discharger to submit: (a) a Groundwater Characterization Workplan, (b) a Sewer Lift Station Safeguard Disposal Plan, (c) a Sludge Disposal Plan, (d) a Collection System Engineering Evaluation and Corrective Action Plan, (e) a Groundwater Well Installation Report, (f) a Construction Inspection Report, (g) a Revenue Plan, and (h) Quarterly Progress Reports. In addition, the TSO required the Discharger to comply with revised MRP 90-186. The TSO has not yet been rescinded.
8. On 19 October 2007, following a facility inspection and meeting with the Discharger, the Executive Officer issued a CWC section 13267 Order to address certain problems identified during the inspection and to require submittal of certain technical reports. In summary, the Order required the Discharger to submit: (a) a detailed plan and schedule to repair the percolation pond berms, (b) a report certifying that all equipment necessary to conduct freeboard monitoring in compliance with the revised MRP had been installed, (c) a report certifying that the Oxbow Marina influent flow meter had been repaired and/or replaced and was calibrated, and (d) a Capacity Analysis Conceptual Plan for the WWTF to address expected growth over the next four years. As of the date of this Order, the Discharger has completed all of the tasks required by the Section 13267 Order, except for submitting the Capacity Analysis Conceptual Plan, which was due by 28 February 2008. Based on conversations with the Discharger's consultant, Board staff understands

that the Capacity Analysis Conceptual Plan has not been submitted because of influent flow meter problems.

Chronology of Violations Alleged in Complaint R5-2009-0575

9. On 23 October 2008, the Discharger notified Board staff that it had discovered a raw sewage spill from the force main. The spill occurred in a cornfield. An unknown volume of the spill flowed to a drainage ditch and then to Georgiana Slough via a pumping station. The spill resulted from a crack measuring approximately 18-inches long in a buried section of the force main. The Discharger estimated that the volume of the spill may have been as much as 2,000,000 gallons because the leak in the force main may have begun as early as 15 September 2008 (39 days prior to its discovery), based on a reduction of influent flows. Following discovery of the spill, the drainage ditch was blocked with soil to prevent further migration of the raw sewage. The leaking section of pipe was repaired on 24 October 2008. On 3 March 2009, Board staff issued a Notice of Violation (NOV) for the spill. The NOV required the Discharger to submit a technical report by 1 May 2009 describing corrective actions to be taken to prevent future spills. In addition, the NOV required the Discharger to provide documentation showing that the City of Isleton's influent flow meter had been repaired or replaced.
10. On 13 April 2009, the Discharger notified Board staff that it had discovered another raw sewage spill from the force main. The spill resulted from a leak in a cracked section of the buried force main approximately 20 to 30 feet southeast of the drainage ditch near the wastewater ponds. The Discharger stated that an unknown volume of raw sewage entered the drainage ditch and then flowed to Georgiana Slough. The estimated volume of the spill was not determined because the Discharger's influent flow meter was not operational. The Discharger stated that within approximately 90 minutes following discovery of the spill, the pumping plant was shut down and any sewage remaining of the ground was removed via a vacuum truck and transported to the wastewater ponds. Repairs to the cracked section of pipeline were completed on 14 April 2009. Prior to discovery of the spill, the Discharger had been walking this portion of force main several times per month inspecting for potential leaks. On 19 June 2009, Board staff issued an NOV for the spill which required the Discharger to provide a workplan by 1 August 2009 that described proposed measures (e.g., video surveying, etc.) that would be taken to provide an assessment of the integrity of the influent pipeline. In addition, the NOV required the Discharger to provide documentation showing that the City of Isleton's influent flow meter had been repaired or replaced by 1 August 2009. As of early October 2009, the Discharger has purchased a new flow meter but has not permanently installed it. However, by letter dated 3 December 2009, the Discharger states that the new flow meter is installed and operational.

Violations Alleged under CWC section 13350 in Complaint R5-2009-0575

11. Administrative civil liability may be imposed for violations of WDRs Order 90-186 pursuant to CWC section 13350(a) which states, in relevant part,

(a) Any person who ... in violation of any waste discharge requirement ... or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

12. CWC section 13350(e) states, in relevant part,

(e) The state board or a regional board may impose civil liability administratively ... either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

13. Provision No. C.1 of WDRs Order 90-186 states:

The Discharger shall comply with the attached Monitoring and Reporting Program.

14. The Discharger's revised Monitoring and Reporting Program (MRP) required that Discharger conduct continuous influent flow monitoring for the volume of sewage discharged to the wastewater ponds.

15. Since at least 1 November 2008 through 1 October 2009 (a period of 334 days), the City of Isleton's influent flow meter has not been functioning, which is a violation of the revised MRP, and hence of Provision C.1 of the WDRs. If the meter had been functioning, the spill that was discovered on 13 April 2009 might have been discovered sooner, and the spill volume may have been reduced. Because the flow meter was not operating, the volume of raw sewage that discharged from the force main was not determined. In addition, because the flow meter is not operating, the Discharger has not submitted the Capacity Analysis Conceptual Plan that was due in February 2008.

16. **Maximum Civil Liability for Violations under CWC section 13350:** Pursuant to CWC section 13350, up to \$5,000 may be assessed per day per violation. Therefore, the maximum penalty for these 334 days of violations under section 13350 is **one million six hundred and seventy thousand dollars (\$1,670,000).**

Violations Alleged under CWC section 13268 in Complaint R5-2009-0575

17. CWC section 13267(b)(1) states, in relevant part:

... the regional board may require that any person who ... discharges ... or who proposes to discharge waste within its region ...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires...

18. CWC section 13268(a)(1) states, in part:

Any person failing or refusing to furnish technical...reports as required by subdivision (b) of Section 13267, ...is guilty of misdemeanor and may be liable civilly in accordance with subdivision (b).

19. CWC section 13268(b)(1) states, in part:

Civil liability may be administratively imposed by a regional board... for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

20. Although required by the 19 October 2007 CWC section 13267 Order (see Finding 8), the Discharger has failed to submit the Capacity Analysis Conceptual Plan which was due by 28 February 2008.

21. **Maximum Civil Liability for Violations under CWC section 13268:** As of 1 October 2009, the Discharger is subject to penalties of \$1,000 per day for 580 days of not submitting the Capacity Analysis Conceptual Plan pursuant to CWC section 13267. Therefore, a maximum liability of **five hundred and eight eight thousand dollars (\$580,000)** may be assessed pursuant to CWC section 13268.

Violations Alleged under CWC section 13385 in Complaint R5-2009-0575

22. CWC section 13385 states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

... (5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended ...

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.

At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

23. Discharge Prohibition A.1 of WDRs Order 90-186 states:

The direct discharge of wastes to surface waters or surface water drainage courses is prohibited.

24. Discharge Prohibition A.2 of WDRs Order 90-186 states:

The by-pass or overflow of untreated or partially treated waste is prohibited.

25. WDRs Order 90-186 does not authorize the discharge of waste to surface waters. Any discharge of waste to surface waters is a violation of the Clean Water Act, section 301. CWC section 13385 authorizes the imposition of administrative civil liability for such violations.

26. Per CWC section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. The Discharger spilled an estimated 2,000,000 gallons of raw sewage to surface waters over a period of 39 days in September and October 2008, and an unknown amount of raw sewage on 13 April 2009 (see Findings 9 and 10). For the 2,000,000 gallons spill, a total of at least 1,999,000 gallons were discharged in excess of 1,000 gallons per spill event. Therefore, at \$10 per gallon for discharges in excess of 1,000 gallon, and at \$10,000 per day for each day of discharge, the maximum liabilities are \$19,990,000 for the gallons spilled and \$400,000 for the 40 days of discharge. Taking these maximum liability amounts together, the total amount of penalties that may be assessed pursuant to section 13385 is **twenty million three hundred and ninety dollars (\$20,390,000)**.

Total Maximum Penalty Alleged in Complaint R5-2009-0575

27. Added together, the total maximum penalties that could be assessed under CWC sections 13350, 13268, and 13385 (described in Findings 16, 21, and 26) is **twenty two million six hundred and forty thousand dollars (22,640,000)**.

Liability Amount

28. Pursuant to CWC section 13385(e), at a minimum, liability shall be assessed at a level that recovers the economic benefits derived from the acts that constitute the violation. The Central Valley Water Board estimates that the Discharger gained an economic benefit of less than \$15,000 for not replacing the force main and the flow meter in a timely manner.

29. On 12 November 2009, Executive Officer Pamela Creedon issued Administrative Civil Liability Complaint R5-2009-0575 to the Discharger. The Complaint proposed four hundred fifteen thousand dollars (\$415,000) in civil liability pursuant to CWC sections

13350, 13268, and 13385. The amount of the liability was established based on a review of the factors cited in CWC section 13385.

30. Following issuance of the ACL Complaint, the Discharger and the Board's Prosecution Team conferred for the purpose of settling the violations. On 10 December 2009, after arms-length negotiations, the Discharger submitted a proposal to settle the ACL Complaint by paying fifteen thousand dollars (\$15,000) and completing the work described in Attachment A. This settlement proposal was accepted by the Executive Officer, acting as head of the Board's Prosecution Team. The amount of the liability was established based on a review of the factors cited in CWC section 13327. The factors used to establish the amount of liability are discussed below.
31. *Nature and Extent:* The Discharger has violated Discharge Prohibitions A.1 and A.2 of WDRs Order 90-186, by discharging at least 2,000,000 gallons of raw sewage into drainage ditch, and then into surface waters of Georgina Slough during a spill that was discovered on 13 October 2008. In addition, the Discharger also discharged an unknown amount of raw sewage to surface waters of Georgiana Slough from the same influent pipeline during a spill that was discovered on 13 April 2009. The volume of the spill that discovered on 13 April 2009 is unknown because the Discharger states that they did not have an operational influent flow meter. The Discharger has received NOVs for each of these spills to surface waters and is fully aware of the spills. The Discharger has also not submitted the Capacity Analysis report which was due in February 2008, and has not submitted complete monitoring reports because it does not have an operational flow meter.
32. *Circumstances:* The circumstances are such that the spill to surface waters that was discovered on 23 October 2009 could have been reduced in volume if the Discharger had reviewed its influent flow data and recognized a roughly 20,000 gallon per day decrease in the influent flow volume and investigated the pipeline for potential leaks during the week of 15 September 2008. In addition, if the City of Isleton's influent meter was operational during the spill that was discovered on 13 April 2009, the Discharger may have been able to determine that there was leak in the influent pipeline based on reduced flows. Flow meter monitoring is required by the 2002 revised Monitoring and Reporting Program (MRP), and the City should have replaced or repaired its flow meter when it determined that it wasn't working. Finally, the City has stated that the Capacity Analysis Report was not submitted because of the non-operational flow meter.
33. *Gravity:* The Discharger's failure to prevent the raw sewage spills to surface waters of Georgiana Slough has resulted in potential human health risks from bacteria and viruses. In addition, the Discharger's failure to submit the Capacity Analysis Report as required by the October 2007 Section 13267 Order is a violation of the WDRs. The lack of an operational flow meter is also a violation of the WDRs, and has directly resulted in the failure to submit the Capacity Analysis and has indirectly resulted in an increased volume of wastewater spilled.

34. *Toxicity*: Because of the volume of spills to surface waters and the fact that the spills were raw sewage, the degree of toxicity from these discharges appears to be moderate.
35. *Susceptibility of the Discharge to Cleanup*: Due to the circumstances of the spills, once the sewage entered surface waters there was no practical way to clean up or to avoid water quality impacts or impacts to beneficial uses.
36. *Degree of Culpability*: The Discharger was aware of the prohibition against discharges to surface waters. It appears that the Discharger did not make sufficient inspections or testing of the 24-year old force main to prevent unauthorized discharges. In addition, the Discharger did not investigate a significant reduction in flow volumes recorded by its flow meter. The Discharger was aware of the requirement to record influent flows to the treatment plant, and therefore the need to have a working flow meter. The Discharger was also aware of the requirement to submit a Capacity Analysis Report, and the fact that this report would rely on data from the flow meter. However, the Discharger did not repair/replace the flow meter until 3 December 2009 so that it could comply with its requirements.
37. *Notification of Violation*: The Discharger notified Water Board staff, Sacramento County Environmental Management, and the California Emergency Management Agency of the spills, in accordance with the Standard Provisions and Reporting Requirements.
38. *Degree of Cooperation*: The Discharger has been cooperative in providing required spill reports per the WDRs and the Standard Provisions and Reporting Requirements. However, the Discharger has not been cooperative in complying with its 1996 Cease and Desist Order, its 2002 CWC 13308 Time Schedule Order, its 2007 CWC 13268 Order for Reports, or its revised Monitoring and Reporting Program.
39. *Prior History of Violations*: Since issuance of the WDRs in 1990, the Discharger has received a Cease and Desist Order (CDO) in May 1996 to address wastewater overflows due to the lack of capacity in the wastewater ponds, (b) a Water Code Section 13308 Time Schedule Order (TSO) in August 2002 to address the construction improvements to increase capacity at the WWTP, and (c) a CWC section 13267 Order to address certain problems identified during an inspection and to require submittal of certain technical reports. Requirements in the CWC section 13267 Order have not been completed and therefore the TSO has not been rescinded.
40. *Economic Benefit*: The discharges were due to leaks discovered in a section of 10-inch force main from the lift station to the wastewater ponds. The severity of the discharge could have been prevented if the Discharger would have began conducting daily inspections of the force main, and/or replaced the 24-year old force main following discovery of the two million gallon spill on 23 October 2008. It is our understanding that daily inspections of the pipeline began following a 27 August 2009 meeting to discuss the violations. The City has accrued a small economic benefit (interest avoided on any necessary loan) by not yet replacing the force main and by only recently installing the

flow meter. Board staff has estimated that the total economic benefit for the spills, flow meter, and force main is less than \$15,000.

41. *Ability to Pay:* The City of Isleton is a small community which has experienced financial challenges in recent years. According to the City Manager's 14 September 2009 letter, for fiscal years 2005/06 through 2007/08, the City Council approved budgets which overestimated revenue and underestimated expenses. This resulted in the City accruing approximately \$1 million of debt. The City is now operating with a balanced budget and sold \$1 million in Certificates of Participation to pay off the outstanding debt. The City's Sewer Enterprise Fund generates \$300,000 in revenue each year, of which 20% is used to pay a United States Department of Agriculture (USDA) loan. The City has also received grants for wastewater treatment plant improvements from the Sacramento Housing and Redevelopment Agency, and anticipates receiving additional grants to address the force main replacement.
42. *Staff Costs:* Board staff spent approximately 200 hours investigating this incident and preparing this Order. The total cost for Board staff time is \$30,000 based on a rate of \$150 per hour.
43. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Pamela Creedon is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Kenneth D. Landau has the authority to issue this Order.
44. This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website, in a newspaper of general circulation in the community, and was provided to all interested parties. The 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) has expired.
45. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 *et seq.*), on accordance with California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED THAT:

1. The City of Isleton shall pay an Administrative Civil Liability in the amount of three hundred ninety thousand dollars (\$390,000) of which three hundred seventy five thousand (\$375,000) shall be permanently suspended pending successful completion of the work listed in Attachment A. Attachment A, a part of this Order, includes a list of suspended liability tasks that will be completed and deliverables that will be submitted to the Central Valley Water Board.

2. No later than 30 days from the date on which this Order is issued, the City of Isleton shall pay **fifteen thousand dollars (\$15,000)** in administrative civil liability. Payment shall be made by check made payable to the *State Water Pollution Cleanup and Abatement Account* and remitted to the Central Valley Regional Board located at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California.
3. If the Assistant Executive Officer determines that either of the tasks listed in Attachment A and further described below are not satisfactorily completed by their respective due date (including any extensions approved by the Assistant Executive Officer), the Assistant Executive Officer may demand payment of the suspended liability, as follows:
 - a. Task 1: Capacity Analysis Report. If the Discharger fails to submit a Capacity Analysis Report that meets the Assistant Executive Officer's approval by 30 September 2010, then within 30 days of demand, the Discharger shall pay \$25,000 of the suspended penalty to the *State Water Pollution Cleanup and Abatement Account*. Payment shall be made via check and shall contain a reference to "ACL Order R5-2010-0504".
 - b. Task 2: Sewer Force Main Completion Report. If the Discharger fails to a) walk the sewer force main inspecting for potential leaks for a minimum of five days per week, b) submit quarterly progress reports describing the work completed on the sewer force-main due 1 February 2010, 1 May 2010, and 1 August 2010, and/or c) fails to submit a report that meets the Assistant Executive Officer's approval describing that the force main has been installed to industry standards and is being used to transport wastewater to the wastewater plant by 30 September 2010, then within 30 days of demand, the Discharger shall pay \$350,000 of the suspended penalty to the *State Water Pollution Cleanup and Abatement Account*. Payment shall be made via check and shall contain a reference to "ACL Order R5-2010-0504".
4. Payment of the \$15,000 and successful and timely completion of the tasks listed in Attachment A shall resolve the violations charged in ACL Complaint R5-2009-0575.
5. The Discharger is ultimately responsible for ensuring that the work described in Attachment A is satisfactorily completed. In addition, the Discharger is responsible for submitting all deliverables and quarterly progress reports by the due dates listed in Attachment A.
6. The Assistant Executive Officer may extend the deadlines contained in this Order if the Discharger demonstrates that unforeseeable contingencies have created delays, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines and makes the extension request in advance of the expiration of the deadline. The Discharger shall make any deadline extension request in writing. Any request for an extension not responded to in writing by the Central Valley Water Board shall be deemed denied. The Discharger must obtain explicit approval from the Assistant Executive Officer for any significant departures from the tasks described in Attachment A. Failure to obtain written approval for any significant departures will result in the assessment of the actual

cost difference between the portion of the task completed in conformity with the tasks described in Attachment A and the total amount of the suspended penalty.

7. If the Discharger fails to make the payments or take any of the above actions, the Assistant Executive Officer may refer the matter to the State Attorney General for enforcement of the terms of this Order.
8. This Order is final, and shall be effective immediately upon signature.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

Original signed by

KENNETH D. LANDAU, Assistant Executive Officer

27 January 2010

Date

gjc: 27 Jan-10

Attachment A: Suspended Liability Tasks

Attachment A
Administrative Civil Liability Order No. R5-2009-0504
Suspended Liability Task Descriptions

Task 1: Capacity Analysis Report

Due date: 30 September 2010

Assigned Credit for Task Completion: \$25,000

Brief Description of the Task: As required by a 19 October 2007 Water Code Section 13267 Order, the City of Isleton shall conduct a capacity analysis to show whether the Wastewater Treatment Facility has adequate treatment, storage, and disposal capacity for both current and projected 2015 influent flows.

Project Schedule and Deliverable:

By **1 September 2010**, the City of Isleton will submit a Capacity Analysis Report prepared by a California-registered Professional Engineer and bearing the professional's signature and stamp. The capacity analysis shall clearly show whether the wastewater treatment facility has adequate treatment, storage, and disposal capacity for both current influent flows and for projected 2015 influent flows. If there is not enough capacity for projected 2015 flows, then the Capacity Analysis Report will contain a conceptual plan for treatment plant expansion to accommodate expected growth. Separate hydraulic capacity analyses (water balances) shall be prepared for the average rainfall year and the 100-year return period total annual precipitation. The water balances shall comply with the guidance document attached to the 19 October 2007 Water Code Section 13267 Order, and shall be based on the following:

- a. Influent flow monitoring data collected over the last five years;
- b. Reasonable projections of infiltration and inflow (I/I) based on actual flow monitoring data before and after the recently completed I/I correction program;
- c. A minimum of two feet of freeboard in each pond and effluent disposal area at all times;
- d. Historical local evaporation and evapotranspiration data (monthly average values);
- e. Local precipitation data with the 100-year return period annual total distributed monthly in accordance with mean monthly precipitation patterns;
- f. Effluent disposal area loading rates distributed monthly in accordance with expected seasonal variations; and
- g. Projected long-term percolation rates in the unlined ponds and effects of solids plugging.

Attachment A
Administrative Civil Liability Order No. R5-2009-0504
Suspended Liability Task Descriptions

Task 2: Sewer Force Main Completion Report

Final due date: 30 September 2010

Assigned Credit for Task Completion: \$350,000

Brief Description of the Task: The City of Isleton will design and install a sewer force-main to replace the existing 10-inch force main. The force main will measure approximately 4,400 feet long and extend from the wet well (headworks) to the evaporation ponds.

Project Schedule and Deliverable:

Beginning **immediately** and continuing until the force main is replaced, the Discharger shall continue to walk the sewer force main five days per week inspecting for potential leaks. Inspection results must be documented in the monthly monitoring reports that are required by the WDRs.

By **1 September 2010**, the City of Isleton will submit a report showing that the force main has been installed to industry standards and is being used to transport wastewater to the wastewater plant.

Task 3: Quarterly Progress Reports

Beginning **1 February 2010**, and by the first day of the second month following each calendar quarter (i.e., by **1 February, 1 May, and 1 August**), the City of Isleton shall submit quarterly progress reports describing the work completed to date regarding each of the tasks described above.



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

Linda S. Adams
Secretary for
Environmental
Protection

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

27 January 2010

Bruce Pope
City of Isleton
101 Second Street
P.O. Box 716
Isleton, CA 95641

PAYMENT SCHEDULE FOR ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2010-0504, CITY OF ISLETON, SACRAMENTO COUNTY

Pursuant to Administrative Civil Liability Order R5-2010-0504 (Order), you are ordered to pay \$390,000 to the State Water Resources Control Board Cleanup and Abatement Account. Payment will resolve the violations alleged in Administrative Civil Liability Complaint R5-2009-0575. However, the Central Valley Water Board will permanently suspend collection of \$375,000 of the civil liability imposed by the Order if you comply with Attachment A of the Order. The Order also requires payment of \$15,000 within 30 days. However, the Central Valley Water Board will defer collection of the \$15,000 if you comply with the payment schedule specified below:

The Discharger agrees to pay \$15,000 to the State Water Resources Control Board Cleanup and Abatement Account in eight payments of \$1,875 over an eight month period beginning in February 2010. Payments shall be made by check made payable to the *State Water Pollution Cleanup and Abatement Account* and shall contain a reference to "ACL Order R5-2010-0504". The checks shall be remitted to the Central Valley Regional Water Board located at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.

The first payment is due on **26 February 2010**. Subsequent payments are due by **31 March 2010, 30 April 2010, 28 May 2010, 30 June 2010, 30 July 2010, 31 August 2010, and 30 September 2010**.

This letter memorializes and accepts the above payment schedule on the following conditions. If the City of Isleton fails to make the payments in accordance with the specified deadlines without obtaining explicit approval from the Assistant Executive Officer, the Assistant Executive Officer shall demand that the remaining unpaid balance of the \$15,000 be paid with 30 days of notification of such failure. Alternatively, the Assistant Executive Officer may refer this matter to the California Attorney General to obtain compliance with the terms of this Order.

If you have any questions, please contact Wendy Wyels at (916) 464-4835.

Original signed by

KENNETH D. LANDAU
Assistant Executive Officer

cc: see next page

California Environmental Protection Agency

cc w/enc: David Larsen, Law Offices of David L. Larsen, San Ramon

cc w/o enc: Reed Sato, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento
Dana Booth, Sacramento Co. Env. Management Dept., Sacramento
Bill Jennings, California Sportfishing Protection Alliance, Stockton

gjc: 27 Jan-10

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0545

IN THE MATTER OF
SACRAMENTO AREA SEWER DISTRICT
SACRAMENTO COUNTY

This Complaint is issued to the Sacramento Area Sewer District (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of the State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ, General Waste Discharge Requirements (WDRs) for Sanitary Sewer Systems.

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection system that serves urbanized areas of Sacramento County, an area covering more than 250 square miles. The collection system is regulated by State Water Board Order No. 2006-0003-DWQ, adopted on 2 May 2006. The Discharger is solely responsible for compliance with the WDRs.
2. The collection system conveys an average of 115 million gallons of wastewater per day through more than 3,000 miles of main line pipe with approximately 1,200 miles of lower lateral pipelines to the Sacramento Regional Wastewater Treatment Plant in Elk Grove.
3. The Discharger is required to operate and maintain its sewage collection system to prevent sanitary sewer overflows and spills in compliance with requirements of State Water Board Order No. 2006-0003-DWQ, Statewide General WDRs for Sanitary Sewer Systems. The District was required to obtain coverage under the General WDRs as of 2 November 2006.
4. State Water Board Order No. 2006-0003-DWQ includes Prohibitions C.1 and C.2.

Prohibition C.1 states: *"Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."*

Prohibition C.2 states: *"Any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited."*

5. From 2 November 2006 through 14 April 2008, the Sacramento Area Sewer District has reported overflows of 897,637 gallons of sewage from its collection system. Of this volume, 855,832 gallons were discharged into surface waters. Since enrollment under Order No. 2006-0003-DWQ, the Discharger has reported at least 33 spills of raw sewage

from its collection system, excluding reported spills from private laterals. Of the approximately 33 spills, 27 impacted surface waters, as summarized in Attachment A, Table of Sanitary Sewer Overflows, a part of this Complaint.

6. The largest of these discharges occurred on 13 February 2008, when over 700,000 gallons of raw sewage spilled into Arcade Creek after the pipeline that bridged the creek collapsed. There were signs of erosion along the bank and around the pipeline transition point. The collapse was attributed to erosion of the bank around the pipeline and antiquated pipeline design that provided for a susceptible transition point to be exposed over the creek.
7. In response to the 13 February 2008 spill, the Discharger initially set up two sandbag barrier dams approximately two miles downstream of the spill location in an attempt to contain the pulse while it dewatered the creek to remove spilled sewage. After Regional Water Board staff observed that the dams did not contain all the sewage, an additional dam was placed below the other two in order to improve collection of more of the spilled sewage. No documentation has been provided regarding the amount of waste (sewage and contaminated creek water) removed by pumps in the creek bed. Regional Water Board staff observed that the spill was not entirely contained by the dams, and that at least two miles of the creek was not cleaned up.
8. The Discharger stated in an email dated 15 February 2008 that it was initiating an urgent inspection program of all known creek crossings and parallel alignments, and would conduct immediate creek erosion repair where needed, would develop a set of design standards for different creek crossing situations, and would implement repairs or replacements to crossings as needed.
9. The Discharger has reported previous SSOs from pipelines located near creeks. In particular, on 20 November 2002, a pipeline coupling failed due to erosion and a significant volume of raw sewage was discharged into Chicago Creek. In response to that spill, the Discharger submitted a report, dated 4 December 2002, indicating that it would identify similar situations where pipelines run through ravines or waterways, and determine the most feasible method of performing physical maintenance or inspections, and evaluate the feasibility of relocating the pipes to more accessible locations. If this program had resulted in a system upgrade, the pipeline break over Arcade Creek may not have occurred.

Regulatory Considerations

10. As described above, the Discharger discharged untreated sewage to waters of the United States in violation of Prohibitions C.1 and C.2 contained in State Water Board Order No. 2006-0003-DWQ, Statewide General WDRs for Sanitary Sewer Systems.

11. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376 prohibits discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
12. CWC section 13376 states, in part: *“Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260...” and “The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited.”*
13. State Water Board Order No. 2006-0003-DWQ is not an NPDES permit. Therefore, by failing to file a report of waste discharge as set forth in CWC section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, the Discharger violated CWC section 13376.
14. CWC section 13385 states, in part:

*“(a) Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):
(1) Section 13375 or 13376.”*

*“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both the following:
(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”*
15. Pursuant to CWC section 13385, the maximum administrative civil liability which can be imposed by the Regional Water Board under CWC section 13385 is between \$359,250 and \$8,644,530. This range was calculated as follows:

From 2 November 2006 through 14 April 2008, approximately 855,832 gallons of raw sewage was discharged to surface waters on 27 days. For some of the spill incidents, the Discharger installed downstream dams in the receiving waterbody and removed a portion of the contaminated water. However, for 2 spill incidents, which collectively resulted in the spill of 10,925 gallons of sewage, none of the contaminated water was removed from the affected waterbodies. If it is assumed that all the spilled sewage was cleaned up from the incidents where the Discharger removed a portion of the contaminated water, then a total of 8,925 gallons was discharged in excess of 1,000 gallons, and the maximum liability is calculated to be \$270,000 (27 days times \$10,000 per day) plus \$89,250 (8,925 gallons times \$10 per gallon). If it is assumed that once the sewage contaminated the receiving water, it was not susceptible to cleanup, then a

total of 837,453 gallons was discharged in excess of the 1,000 gallons per spill event, and the maximum administrative civil liability is calculated to be \$270,000 (27 days times \$10,000 per day) plus \$8,374,530 (837,453 gallons times \$10 per gallon). The assessed penalty is significantly lower than the lesser of these two figures.

16. CWC section 13385(e) states: *"In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."*
17. Pursuant to CWC section 13385(e), administrative civil liability at minimum must be equivalent to the economic benefit accrued by the Discharger for not implementing management and physical improvements necessary to prevent the discharges. All of the discharges of raw sewage resulted from inadequate maintenance and/or implementation of collection system improvements. Because of the unknown problems throughout the collection system, Regional Water Board staff is unable to precisely calculate the economic benefit. However, the economic benefit would be equal to the deferred costs associated with postponing repairs to fix problematic portions of the collection system, and is estimated to be below the assessed penalty.
18. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

SACRAMENTO AREA SEWER DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. ACL complaint No. R5-2008-0531 is hereby rescinded.
2. The Assistant Executive Officer of the Regional Water Board charges the Discharger with an administrative civil liability in the amount of **two hundred and one thousand dollars (\$201,000)**. The amount of the proposed liability is based upon a review of the factors cited in California Water Code section 13385 and the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
3. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **11/12 September 2008**, unless the Discharger agrees to complete the following by **6 August 2008**:

- a. Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b. Pay the proposed civil liability of **two hundred and one thousand dollars (\$201,000)** in full.
4. If a hearing is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

JACK E. DEL CONTE, Assistant Executive Officer

2 July 2008

Attachment A: Table of Sanitary Sewer Overflows from 2 November 2006 to 14 April 2008
AMH/PHL: 2 July 2008

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Sacramento Area Sewer District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0545 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of service of the Complaint; and
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **two hundred and one thousand dollars (\$201,000)** by check, which contains a reference to "ACL Complaint No. R5-2008-0545" and is made payable to the "*State Water Pollution Cleanup and Abatement Account*."
5. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Board receive new information during this comment period, the Regional Board may withdraw the complaint, return payment, and issue a new complaint.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

Attachment A to ACLC R5-2008-0545
Table of Sanitary Sewer Overflows from 2 November 2006 to 14 April 2008
Sacramento Area Sewer District

Date of Spill	Reported Volume Discharged [gallons]	Discharge to Surface Water Drainage Course?	Volume in excess of 1,000 gallons reaching surface Water Drainage Course	Spill Location	Cause of Spill	OES Control #	City
16-Dec-06	13,485	Yes	12,485	6416 Terra Way	Cobble in the line.	06-7428	Citrus Heights
23-Dec-06	6,900	No	0	6900 Airport Blvd.	Pump station failure	06-7584	Sacramento
22-Jan-07	22,250	Yes	0	5927 Lemon Park Way	Vandalism	07-0489	Sacramento
31-Jan-07	11,400	Yes	10,400	8138 Bonnie Oak Way	Roots and grease in mainline	07-0675	Citrus Heights
14-Feb-07	1,875	Yes	875	Bruceville Rd.	Open gate valve on air release valve	07-1016	Elk Grove
12-Mar-07	6,325	No	0	4336 Watt Ave.	Maintenance hole overflowed during repairs	07-1600	Sacramento
02-Apr-07	6,500	Yes	5,500	Howe Park	Debris blockage in mainline	07-2079	Sacramento
04-Apr-07	30,000	Yes	29,000	Whitlock Parkway and Bruceville Rd.	Air relief valve vent line separated	07-2129	Elk Grove
09-Apr-07	93	Yes	0	Madison (650 ft west of Primrose Dr.)	Roots blocking the mainline	07-2210	Fair Oaks
09-Apr-07	73	Yes	0	14 Quail Point Place	Root blockage in mainline	07-2215	Sacramento
19-Apr-07	3,737	Yes	2,737	7541 Fireweed Circle	Combination of roots and grease	07-2415	Citrus Heights
22-May-07	102	Yes	0	9584 East Stockton	Blockage of service line	07-3130	Elk Grove
26-May-07	1,180	No	0	6955 Los Olivos Way	Root blockage in mainline	07-3215	Carmichael
30-Jun-07	800	No	0	Intersection of Matheson and Fulton	Grease	07-3937	Sacramento
05-Jul-07	8,300	Yes	7,300	5811 Muldrow Rd.	Debris in sewer mainline	07-4690	Sacramento
05-Jul-07	48,750	Yes	47,750	0 Ackley Dr.	Failure of PVC pipe fitting on an air release valve	07-4020	Elk Grove

Attachment A

-2-

**Table of Sanitary Sewer Overflows from 2 November 2006 to 14 April 2008
Sacramento Area Sewer District**

Date of Spill	Reported Volume Discharged [gallons]	Discharge to Surface Water Drainage Course?	Volume in excess of 1,000 gallons reaching surface Water Drainage Course	Spill Location	Cause of Spill	OES Control #	City
12-Aug-07	610	Yes	0	4325 Oxwood Dr.	Grease stoppage in mainline	07-4842	Sacramento
25-Aug-07	6,875	Yes	5,875	3600 Owens Way/7016 Watt Ave.	Roots in mainline	07-5120	North Highlands
27-Aug-07	1,675	Yes	675	7372 Auburn Blvd.	Roots in mainline	07-5151	Citrus Heights
07-Oct-07	at least 6,750	Yes	5,750	5062 Patti Jo Dr.	Blockage	07-6089	Carmichael
17-Nov-07	620	Yes	0	8441 Fair Oaks Blvd.	Grease stoppage in mainline	07-7131	Carmichael
19-Nov-07	8,460	Yes	7,460	8661 Elk Grove Blvd.	Grease in manhole drop	07-7175	Elk Grove
03-Jan-08	3,400	No	0	6740 Landis Ave.	Grease stoppage in mainline	08-0039	Carmichael
04-Jan-08	2,625	Yes	1,625	3600 Owens Ave.	Historical Spill- Manhole overflows due to heavy rains	08-0284	North Highlands
09-Jan-08	150	Yes	0	6324 Kenneth Ave.	Grease stoppage in mainline	08-0331	Carmichael
10-Jan-08	169	Yes	0	8467 Sunset Ave.	Debris stoppage in mainline	08-0354	Fair Oaks
14-Jan-08	660	Yes	0	Ancil Hoffman Park	Grease stoppage in mainline	08-0424	Carmichael
26-Jan-08	534	Yes	0	7406 del Coronado Way	Grease stoppage in mainline	08-0783	Florin
13-Feb-08	701,021	Yes	700,021	0 Hemlock St.	Pipe failure at coupling due to bank erosion and pipe failure	08-1296	Sacramento
06-Mar-08	197	Yes	0	4210 Pocono Ct.	Grease stoppage in mainline	08-1859	Fair Oaks

Attachment A

-3-

**Table of Sanitary Sewer Overflows from 2 November 2008 to 14 April 2008
Sacramento Area Sewer District**

Date of Spill	Reported Volume Discharged [gallons]	Discharge to Surface Water Drainage Course?	Volume in excess of 1,000 gallons reaching surface Water Drainage Course	Spill Location	Cause of Spill	OES Control #	City
11-Mar-08	950	No	0	Bruceville at Elk Grove	Air relief valve failure	08-1980	Elk Grove
09-Apr-08	904	Yes	0	116 Riverbank Place	Root and grease blockage	08-2673	Fair Oaks
14-Apr-08	267	Yes	0	5641 South Grove Drive	Mainline stoppage due to roots	08-2803	Citrus Heights

Total Volume of discharges = 897,637 gallons

Total Volume of discharges to surface waters = 855,832 gallons

Total Volume of discharges in excess of 1,000 gallons reaching surface Water Drainage Course = 837,453 gallons